



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue
Seattle, WA 98101

October 10, 2003

**URGENT LEGAL MATTER - PROMPT REPLY NECESSARY
CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Teck Cominco Metals, Ltd.
Care of: Karen Dunfee
200 Burrard Street, Suite 600
Vancouver, British Columbia
Canada V6C 3L9

Re: Special Notice Letter for the Upper Columbia River Site

Dear Ms. Dunfee :

Throughout the past year, EPA has requested Teck Cominco, through representatives at Teck Cominco America Inc., to agree to enter an administrative order on consent with the Environmental Protection Agency (EPA) to perform a Remedial Investigation and Feasibility Study (RI/FS) for the Upper Columbia River Site (Site) consistent with the U. S. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). During this time, EPA has exchanged numerous letters with Teck Cominco, and met with Teck Cominco representatives on several occasions to discuss technical and legal issues regarding this Site. Throughout these meetings and correspondence, Teck Cominco has expressed an interest in performing a study at the Site and/or in supporting other parties to perform a study at the Site. We have spent many months exploring Teck Cominco's proposals, and listening to the concerns and objectives of all the various local interests. We have visited with the local counties, the state, tribes and environmental groups to discuss their concerns. EPA believes that some progress has been made.

It is now time for Teck Cominco to decide whether it is going to perform the RI/FS at the Site under an agreement with EPA consistent with CERCLA and the Superfund Alternative Sites approach. This approach allows EPA to facilitate settlements and cleanups at contaminated sites not listed on CERCLA's National Priorities List (NPL) that are equivalent to settlements and cleanups at sites listed on the NPL. Toward that end, this letter serves three basic functions. First, it contains a formal demand for reimbursement of costs that have been incurred, including interest thereon, and that are expected to be incurred, in response to the health/environmental concerns at the Site. Second, this letter notifies you that a 60-day period of formal negotiations with EPA automatically begins with this letter. Third, this letter provides general and Site-specific information to assist you in these negotiations.

SPECIAL NOTICE AND NEGOTIATION MORATORIUM

EPA has determined that use of the Section 122(e) special notice procedures specified in CERCLA will facilitate a settlement between Teck Cominco and EPA for this Site. Therefore, under Section 122 of CERCLA, 42 U.S.C. § 9622, this letter triggers a 60-day moratorium on certain EPA response activities at the Site. During this 60-day period, you are invited to participate in formal negotiations with EPA. You are also encouraged to negotiate a settlement providing for you to conduct or finance the response activities required at the Site. The 60-day negotiation period ends on December 10, 2003. The 60-day negotiation period will be extended for an additional thirty (30) days if you provide EPA with a good faith offer to conduct or finance the Remedial Investigation/Feasibility Study ("RI/FS"). Should a 90-day moratorium take place, negotiations will conclude on January 10, 2004. If settlement is reached between Teck Cominco and EPA within the 90-day negotiation moratorium, the settlement will be embodied in a consent order for RI/FS.

If a settlement cannot be reached within the initial 60-day notice period, EPA may take appropriate action at the Site. Such action could include any of the following options: EPA may issue a Unilateral Administrative Order ("UAO") to you under CERCLA Section 106(a) to perform the RI/FS. If you refuse to comply with the UAO, EPA may pursue civil litigation against you pursuant to CERCLA Section 106(a) to compel compliance, or EPA may fund the RI/FS and any needed remedial action and pursue a CERCLA Section 107 cost recovery claim against you. Given our cooperative relationship thus far, EPA does not anticipate the need to implement these options.

STATEMENT OF WORK AND CONSENT ORDER

A copy of EPA's Statement of Work and Consent Order are enclosed. This is provided to assist you in developing a good faith offer for conducting or financing the RI/FS. In addition, EPA has already provided you with EPA Superfund Alternative Site guidance. As we have explained to you in the past, any final agreement between us would need to include the terms outlined in that guidance.

GOOD FAITH OFFER

As indicated, the 60-day negotiation moratorium triggered by this letter is extended for thirty days if you submit a good faith offer to EPA. A good faith offer to conduct or finance the RI/FS is a written proposal that demonstrates your qualifications and willingness to conduct or finance the RI/FS and includes the following elements:

- A statement of your willingness to conduct or finance the RI/FS which is consistent with EPA's Statement of Work and Consent Order and provides a sufficient basis for further negotiations;
- A paragraph-by-paragraph response to EPA's Statement of Work and Consent Order;
- Demonstration of your technical capability to carry out the RI/FS, including the

identification of the firm(s) that may actually conduct the work or a description of the process you will use to select the firm(s);

- A detailed description of the work plan identifying how you intend to proceed with the work;
- A statement of your willingness to reimburse EPA for costs incurred in overseeing your implementation of the remedial action;
- A demonstration of your capability to finance the RI/FS; and
- The name, address, and phone number of the party who will represent you in negotiations.

DEMAND FOR COSTS INCURRED

As already indicated, with this letter, EPA demands that you reimburse EPA for its costs incurred to date, and encourages you to voluntarily negotiate a consent order in which you perform the RI/FS.

In accordance with CERCLA, EPA has already taken certain actions and incurred certain costs for which you are liable in response to conditions at the Site. These response actions include: the preliminary assessment and expanded site investigation of the Site. The cost to date of the response actions performed at the Site through EPA funding is approximately \$1.8 million. The exact costs will be provided to you shortly. In accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), demand is hereby made for payment of the above amount plus any and all interest recoverable under Section 107, 42 U.S.C. § 9607, or under any other provisions of law.

Interest on past costs incurred will accrue from the date of this demand for payment or any earlier demand, whichever is earlier. Interest on future costs will accrue from the date of expenditure.

ADMINISTRATIVE RECORD

In accordance with Section 113(k) of CERCLA, 42 U.S.C. § 9613(k), EPA must establish an Administrative Record containing the documents that form the basis of EPA's decision on the selection of a response action for a site. The Administrative Record files, which contain the documents related to the response action selected for the Site will be available to the public for inspection and comment at the EPA Regional Office, 1200 Sixth Avenue in Seattle.

PRP RESPONSE AND EPA CONTACT PERSON

You are encouraged to contact EPA as soon as possible, but no later than November 12, 2003, to indicate your willingness to participate in future negotiations at this Site. Otherwise, you have sixty (60) calendar days from this notice to provide EPA, in writing, with a good faith

offer demonstrating your willingness to perform the RI/FS. If EPA does not receive a timely response, EPA will assume that you do not wish to negotiate a resolution of your liabilities in connection with the response, and that you have declined any involvement in performing the response activities. You may be held liable by EPA under Section 107 of CERCLA, 42 U.S.C. §9607, for the cost of the response activities EPA performs at the Site and for any damages to natural resources.

Your response to this Special Notice Letter should be sent to:

Cami Grandinetti
U.S. Environmental Protection Agency
1200 Sixth Ave (Mail Stop ECL-113)
Seattle, WA 98101
206-553-8696

The factual and legal discussions in this letter are intended solely to provide notice and information, and such discussions are not to be construed as a final EPA position on any matter set forth herein, nor as pertain to the application of the 1909 United States-Canada Boundary Waters Treaty.

By sending you the draft Statement of Work and Consent Order at this time, we hope they can be used productively to frame our discussions on October 22nd. Again, we appreciate your efforts to date and remain confident that by continuing to work together cooperatively, we can reach an acceptable agreement within this framework.

Sincerely,

//s//

David Croxton, Unit Manager
Office of Environmental Cleanup

cc: Fred Phillips, U.S. Department of Justice
Doug Horswill, Teck Cominco America Inc. and Teck Cominco Limited
Mark Edwards, Teck Cominco Metals Ltd.
David Godlewski, Teck Cominco America Inc.
Bruce DiLuzio, Teck Cominco America Inc.
Tom Campbell, Campbell George & Strong, LLP
Jim Pendowski, Washington State Department of Ecology
Joseph Pakootas, Colville Confederated Tribes
Alfred Peone, Spokane Tribe
Merill Ott, Eastern Washington Council of Governments